

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 18 2012

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

EUGENE EVAN BAKER,

Plaintiff - Appellant,

v.

ERIC H. HOLDER, Jr., Attorney
General, in his official capacity as
Attorney General of the United States,

Defendant - Appellee.

No. 11-55067

D.C. No. 2:10-cv-03996-SVW-AJW
U.S. District Court for Central
California, Los Angeles

MANDATE

RECEIVED
CLERK, U.S. DISTRICT COURT

SEP 18 2012

CENTRAL DISTRICT OF CALIFORNIA
BY *DLM* DEPUTY

The judgment of this Court, entered July 25, 2012, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:
Molly C. Dwyer
Clerk of Court

Lee-Ann Collins
Deputy Clerk

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EUGENE EVAN BAKER,

Plaintiff - Appellant,

v.

ERIC H. HOLDER, Jr., in his official
capacity as Attorney General of the United
States,

Defendant - Appellee.,

No. 11-55067

D.C. No. 2:10-cv-03996-SVW-
AJW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Stephen V. Wilson, District Judge, Presiding

Argued and Submitted June 6, 2012
Pasadena, California

Before: B. FLETCHER, WARDLAW, and BYBEE, Circuit Judges.

Eugene Baker appeals from the district court's order dismissing his complaint under Federal Rules of Civil Procedure 12(b)(1) and (b)(6). We affirm in part, reverse in part, and remand for further proceedings.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

The district court dismissed the complaint without prejudice under Rule 12(b)(1), concluding that Baker's complaint fails to state facts sufficient to present a "case or controversy" under Article III, § 2 of the Constitution. At the outset, we note a disparity between the complaint as filed on the district court's electronic docket and the complaint as it appears in Baker's excerpts of record. The complaint found in the electronic docket consists of only the first and last pages of the complaint in Baker's excerpts. It is not clear from the record whether the district court had the opportunity to review the complaint in its entirety. The two pages of the complaint available on the electronic docket clearly fail to assert facts sufficient to satisfy the justiciability requirements of Article III, as they do not allege that Baker has taken any steps to acquire a firearm. It is unclear whether the full complaint is adequate.

It is apparent, however, that Baker is capable of amending his complaint to include additional facts that would confer standing. In his opposition to the motion to dismiss, Baker attached a letter from the California Department of Justice ("CA DOJ") informing him that his application to purchase a firearm had been denied because his prior conviction for a misdemeanor crime of domestic violence barred him from purchasing or possessing firearms under federal law. Baker also attached a letter sent by the CA DOJ to a firearms dealer, ordering the dealer not to release

Second Amendment, and therefore does not control Baker's Second Amendment claim.

We therefore affirm the Rule 12(b)(1) dismissal without prejudice, reverse the Rule 12(b)(6) dismissal, and remand with leave to amend the complaint.

Each party shall bear its own costs on appeal.

AFFIRMED in part; **REVERSED** in part; **REMANDED**.